

K SILA DASS & PARTNERS**A****v.****CIMB BANK BHD**

HIGH COURT MALAYA, KUALA LUMPUR

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SITI KHADIJAH S HASSAN BADJENID JC

[SUIT NO: S-22-1353-2007]

11 JULY 2013

BANKING: Banks and banking business - Current account - Unauthorised accounts opened by unknown persons under plaintiff's name - Bank's staff negligently permitting and facilitating opening of impugned accounts - Failure to obtain proper verification - Failure to comply with usual banking procedure - Whether bank owed plaintiff duty of care - Whether vicariously liable for negligence of staff

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CIVIL PROCEDURE: Limitation - Postponement - Period of limitation to begin after discovery of cause of action - Unauthorised accounts opened by unknown persons under plaintiff's name - Whether bank's staff negligently permitting and facilitating opening of impugned accounts - Whether plaintiff time-barred

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TORT: Conspiracy - Proof of - Unauthorised accounts opened by unknown persons under plaintiff's name - Bank's staff negligently permitting and facilitating opening of impugned accounts - Failure to obtain proper verification - Failure to comply with usual banking procedure - Whether conspiracy established

E**F**

TORT: Fraud - Proof of - Unauthorised accounts opened by unknown persons under plaintiff's name - Bank's staff negligently permitting and facilitating opening of impugned accounts - Failure to obtain proper verification - Failure to comply with usual banking procedure - Whether fraud established

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TORT: Negligence - Duty of care - Banker customer duty of care - Unauthorised accounts opened by unknown persons under plaintiff's name - Bank's staff negligently permitting and facilitating opening of impugned accounts - Failure to obtain proper verification - Failure to comply with usual banking procedure - Whether bank owed plaintiff duty of care - Whether bank vicariously liable for negligence of staff

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The plaintiff was a firm of advocates and solicitors with its main office and a few other branches in Johor. Its Petaling Jaya branch, which was the plaintiff in this case, was opened on 14 April 1994 and was closed on 31 March 2007. The plaintiff claimed that two unauthorised accounts were opened under its name and had been operated by unknown

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- A person(s) with the defendant. The first account was opened on 9 March 1998 and was closed on 13 April 2001. The second account was opened on 20 April 2001 and was closed on 14 January 2004. False particulars and forged signatures of the partners of K Sila Dass & Partners of the PJ Branch (Ms Amar Jit Kaur and Mr K Sila Dass) were used in the opening of the impugned accounts. The plaintiff pleaded that the defendant, its servants or agents had wrongfully, wilfully and negligently permitted and facilitated the opening of the impugned accounts without proper verification and authorisation and in so doing the defendant had failed to exercise due care and attention. Conspiracy and fraud were also pleaded. Two of the plaintiff's former clerks (Manoharan and Anthony) were the culprits who were involved in the opening of the impugned accounts. The plaintiff had suffered losses due to these accounts. The defendant denied liability and further contended that the plaintiff's claim was time-barred. The defendant also pleaded that in any event there was no banker and customer relationship between the defendant and the plaintiff.

Held (allowing plaintiff's claim with costs):

- (1) DW2 who was the person who processed the opening of the first account testified that she did not attend to any partners from the plaintiff, did not witness the filling up of documents and she did not verify the signatures. Her manager ('DW4') had forwarded to her the account application form and specimen card duly filled up. The opening process of the first account was not properly carried out by the defendant. DW4 also confirmed that the first account was not opened according to the defendant's procedure and had agreed that the opening and operations of the first account was due to the negligence of the defendant and its officers. (paras 13, 14 & 15)
- (2) PW2 (a chemist from Jabatan Kimia Negara) found that the signatures purporting to be that of Sila Dass and Amar Jit Kaur were not their signatures. (para 16)
- (3) The second impugned account was also opened without any verification done. It was opened by the defendant premised on the documents used in the opening of the first account. (para 17)
- (4) DW4 had rendered assistance to Manoharan and Anthony in the opening of the two accounts knowing that Anthony was not a lawyer. DW4 being a senior officer of the defendant had acted in a way contrary to the requirements of the banking procedure which he was required and expected to follow diligently. DW4's managerial instructions had driven his subordinates to blindly follow suit to the detriment of the plaintiff who as a result had suffered tremendous loss. (paras 20 & 21)

- (5) DW4 did not act with utmost good faith when he rendered wrongful assistance to the culprits, but since the burden of proof in fraud cases is a very heavy one, the plaintiff had failed to prove sufficiently beyond reasonable doubt that DW4 had committed the offence of fraud; *Asean Security Paper Mills Sdn Bhd v. CGU Insurance Bhd* [2007] 2 CLJ 1 (refd). (para 21) A
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- (6) The plaintiff had failed to establish the offence of conspiracy as there was insufficient evidence to prove that there was an agreement amongst all the officers of the defendant and that they had secretly shared a common intention to effect a common purpose of assisting the culprits in forging the signatures of K Sila Dass and Amar Jit Kaur so as to injure the plaintiff which has truly caused damage to the plaintiff. (para 22) C
- (7) It would be absurd for the defendant to contend that it owed the plaintiff no duty of care notwithstanding the glaring evidence from its own witnesses that the defendant was negligent. The plaintiff was at all material time an existing customer of the defendant. Money had dissipated from the impugned accounts as a result of the defendant's negligent act which had directly affected the plaintiff. (paras 25 & 26) D
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- (8) The defendant's officers had been negligent in discharging their duties by breaching the duty of care they owed towards the plaintiff which had resulted in the plaintiff suffering the losses. As the defendant was bound by the acts of its officers, the defendant was vicariously liable for the consequences of their act and in breach of its fiduciary duties towards the plaintiff. (para 38) F
- (9) The plaintiff was not time-barred by the provisions of the Limitation Act 1953 as the period of limitation begins after the discovery of the cause of action. It was only after July 2006 when Manoharan absconded, and upon enquiries made to the defendant bank that the fraud by Manoharan was discovered. This claim was filed in court in 2007 and was therefore not time-barred. (paras 33 & 34) G

Case(s) referred to:

- Asean Security Paper Mills Sdn Bhd v. CGU Insurance Bhd* [2007] 2 CLJ 1 FC (refd) H
- Commissioners of Taxation v. English, Scottish and Australian Bank* [1920] AC 683 (refd)
- Hussin Umar v. Dilip Singhji* AIR (57) [1970] SC 45 (refd)
- Oriental Bank of Malaya v. Rubber Industry (Replanting) Board* [1957] 1 LNS 50 HC (dist) I
- Stoney Stanton Supplies (Coventry) Ltd v. Midland Bank Ltd* [1996] 2 Lloyds Rep 373 (refd)

- A *SV Beverages Holdings Sdn Bhd & Ors v. Kickapoo (Malaysia) Sdn Bhd* [2008] 4 CLJ 20 CA (**refd**)
United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd [1993] 2 CLJ 31 SC (**refd**)

Legislation referred to:

- B Limitation Act 1953, s. 29

For the plaintiff - Prakash Lachimanan; M/s Mathews Hun & Lachimanan
For the defendant - Arham Rahimy Hariri; M/s Azim, Tunku Farik & Wong

Reported by Amutha Suppayah

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JUDGMENT

Siti Khadijah S Hassan Badjenid JC:

- D **Facts**

[1] The plaintiff is a firm of advocates and solicitors with its main office and a few other branches in Johor. Its Petaling Jaya branch, which is the plaintiff in this case, was opened on or about 14 April 1994 but was closed on 31 March 2007. The defendant was at all material times a licensed banker having its registered office in Kuala Lumpur and has a branch in Petaling Jaya, Selangor.

[2] The plaintiff's case is that two unauthorised accounts were opened under its name and had been operated by unknown person(s) with the defendant. The first account bearing number 1407-0497136-050 (first account) was opened on or about 9 March 1998 which was closed on 13 April 2001. The second account bearing number 1407-0498405-057 (second account) was opened on 20 April 2001 and was closed on 14 January 2004. False particulars and forged signatures of the partners of K Sila Dass & Partners of the PJ Branch were used in the opening of the impugned accounts namely that of a lawyer at the firm by the name of Amar Jit Kaur a/p Dharam Singh, and also that of the senior partner, Mr K Sila Dass himself.

[3] The first account was closed on 9 March 1998 when three cheques issued from the first account were dishonoured. According to the evidence of DW1 (Head of Customer Relations Department at the defendant bank) if there is an incident, which is referred to as BMC incident, all banking accounts of that particular customer in any banks will be closed. The partners of the plaintiff firm at all material times were K Sila Dass (Susulin @ M Siladoss) and Azlinda bt Zakariah while Amar Jit Kaur had ceased to be a partner with effect from 30 September 1996.

- [4] The plaintiff pleaded that the defendant and/or its servant(s) and/or agent(s) had wrongfully, wilfully and negligently permitted and/or facilitated the opening of the impugned accounts without proper verification and authorisation and in so doing without their knowledge the defendant had failed to exercise due care and attention; had conspired and/or colluded with the rogues; had dishonestly assisted and/or facilitated the rogues who were likely to be Manoharan Dorasamy the plaintiff's former managing clerk and Anthony Davies and/or others in the opening of the impugned accounts. A B
- [5] Only after July 2006 when Manoharan absconded, and upon enquiries to the defendant the fraud was discovered following which a police report was lodged by the plaintiff in respect of the misuse of signatures. The plaintiff's firm was closed on 31 March 2007 and claims that as a result of all that happened it had suffered losses and damages whereby money lawfully due to the plaintiff were deposited into the impugned accounts and appropriated by those having control of the same. Apart from that, monies released to the plaintiff as stake holders for the benefit of clients and third parties were also deposited into the said accounts and appropriated by the rogues resulting in numerous actions and judgments against the plaintiff for breach of fiduciary duties. C D
- [6] For the damages suffered the plaintiff is claiming indemnity for any claim against them arising from the impugned accounts which were said to be wrongfully, unlawfully and/or negligently opened and operated, and for cheques that were payable to the plaintiff's firm that had been credited into the two said accounts. The plaintiff is also claiming damages including exemplary and aggravated damages, interest and cost. E F
- [7] The defendant has denied that the first account was opened without the plaintiff's knowledge and averred that the claim is time - barred under the Limitations Act 1953. The defendant has also denied that there was fraud in the opening of said accounts and even if there was it was done by plaintiff's workers and/or the plaintiff's agents including its former managing clerk, Manoharan. The defendant has pleaded in the alternative that if it is true the accounts were opened without the plaintiff's knowledge there was no banker and customer relationship between the defendant and the plaintiff. G H
- [8] In fact the defendant has denied having any tortuous or contractual obligations towards the plaintiff regarding the opening of the accounts and all transactions that were done therein. The defendant stated that the plaintiff had been negligent to let the accounts be opened and operated without its knowledge. As regards the second account learned counsel for the defendant submitted that it was opened after the closure I

A of the first account and that the plaintiff actually knew the existence of the second account. It is however not disputed by the defendant that the second account was a special account opened by them premised on the documents used in the opening of the first account.

B **[9] Issues**

- (a) Whether: the plaintiff and/or its partners had authorised the opening of the impugned accounts; the said accounts were opened and operated fraudulently or wrongfully; the signatures of Mr Sila Dass and Amar Jit were forged?
- C** (b) Whether: the defendant is liable to the plaintiff for the opening and operations of the impugned accounts; the servants and/or agents and/or employees of the defendant were negligent or colluded or conspired with the rogues in the opening and operations of the impugned accounts; the servants and/or agents and/or employees of the defendant dishonestly assisted the rogues in the opening and operations of the impugned accounts?
- D**
- (c) Whether: monies and/or cheques made in favour of the plaintiff were deposited and withdrawn from the impugned accounts by the rogues; the plaintiff suffered losses and damages?
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Assessment Of Evidence And Findings

- F** **[10]** According to evidence at the time the impugned accounts were opened and remained in operation the plaintiff had maintained several banking accounts with the defendant, at Kluang and Batu Pahat Johor. Plaintiff's evidence is not disputed that during the opening of the Kluang and Batu Pahat accounts PW5 was required to be present in the premise of the bank and asked to place his signatures in the application form and the specimen card as signatory of the accounts. PW5's signatures
- G** were witnessed by an officer from the bank and he was also required to forward his identity card whereby the bank officer verified his identity. Further, the plaintiff was also required to submit to the bank a list of the partners of the plaintiff and copies of valid practicing certificate of each partner.
- H** **[11]** According to the evidence given by DW1 specimen card and account opening form must be filled up by the customer. When processing an application from a firm of solicitors, the defendant will retain the account application form, specimen card, a copy of the practicing certificate and a letter from the Bar Council confirming the setting up of the firm of solicitors.
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[12] Evidence of the current account officer (DW2) and the operation manager (DW3) show that Pathma Devan (DW4) who was the defendant's branch manager had lent some assistance in the opening of the impugned accounts. It is the contention of learned counsel for the plaintiff that lending assistance or facilitating in the opening of the impugned account amounts to wrongful assistance.

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[13] DW2 told the court that she was the person who processed the opening of the first account. According to her only partners of legal firms are allowed to open an account and when processing an application from a firm of a solicitor the defendant will require the identity card of the partner(s) which will be verified by the defendant, a copy of the practicing certificate and letter from the Bar Council confirming the setting up of the firm of solicitors and the partner must be present in person.

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[14] Further DW2 testified that in this case she did not attend to any partners from the plaintiff, did not witness the filling up of documents and she did not verify the signatures in P1. According to her testimony her manager, Patma Thevan (DW4) who had known the said customer forwarded to her the account application form and specimen card duly filled up. She also informed the court that P1 was not complete as the column for verification by the defendant referred as 'For office use only'. Her evidence shows that though that was the case she processed the application and the first account was allowed to be opened although it is not the defendant's practice to leave the verification column incomplete. She agreed that the opening process of the first account was not properly carried out by the defendant.

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[15] DW4 explained that in respect of the first account an acquaintance by the name of Anthony Davies was not a lawyer but purporting to be an employee of the plaintiff enquired about the opening of an account, and he had directed Anthony Davies to DW2. When the first account was closed Anthony Davies had urged him on the re-opening of the same. DW4 confirmed that the first account was not opened according to defendant's procedure and had agreed that the opening and operations of the first account was due to the negligence of the defendant and its officers.

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[16] PW2 a chemist from Jabatan Kimia Negara had found that the signatures purporting to be that of Sila Dass and Amar Jit Kaur on P1 were not their signatures. PW4, also a qualified chemist, had found that the signature purporting to be that of K Sila Dass on D8 is not the signature of K Sila Dass. Amar Jit denied opening the first account P1 and had lodged a report in respect of the misuse of her signature.

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A K Sila Dass in his evidence had informed the court that he did not place his signatures on P1 and D8 and denied opening both the accounts.

B [17] On the opening of the second impugned account DW3 informed the court that he did it on DW4's instructions after DW4 had met the said client. According to DW3 in his evidence, "Saya ingat saya yang jumpa dengan klien Encik Patma saya buka akaun berdasarkan pada arahan dia sajalah". The specimen card (D8) in respect of the second account was forwarded to DW3 with the signature and the plaintiff's chop on it. DW3 had filled up the name and identity card number.

C There was no verification done in respect of the opening of the second account. It was opened by the defendant premised on the documents used in the opening of the first account.

D [18] Having heard the witnesses' testimony including that of the two experienced chemists from Jabatan Kimia Negara I am of the considered view that the signatures of K Sila Dass and Amar Jit Kaur had been forged in the opening of the two impugned accounts. There is also the evidence of DSP Zaharudin Rasip (PW6) who was previously attached to the forensic lab of the police department as head of the document section. He had conducted forensic analysis of documents and had undergone training amongst others at the American Board of Forensic Document Examiners. From his examination of the signatures on D8

E he concluded that the signature was not that of K Sila Dass.

F [19] Inspector Rahmat Fitri bin Abdullah the investigating officer of the case had also given evidence on oath that Manoharan Dorasamy had admitted to forging the signatures of the partners of the plaintiff in the opening of the impugned accounts with the defendant. The very act of forging the signatures is a clear indication of the offence of fraud. It is clear to me that Manoharan had committed fraud in respect of the opening of the two accounts and Anthony Davies had definitely participated in the commission of that offence.

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H [20] As far as the defendant's officers are concerned there is clear evidence that DW4 had rendered assistance to Manoharan and Anthony Davies in the opening of the two accounts knowing that Anthony Davies was not a lawyer. Manoharan being DW4's acquaintance DW4 would have known or at least could have asked Manoharan whether he was a lawyer. There is no such evidence and is obvious to this court that in this case DW4 being a senior officer of the defendant had acted in a way contrary to the requirements of the banking procedure which

I he was required and expected to follow diligently.

[21] It cannot go unnoticed that DW4's managerial instructions had driven his subordinates to blindly follow suit to the detriment of the plaintiff who as a result had suffered tremendous loss. It appears to me that DW4 did not act with utmost good faith when he rendered wrongful assistance to the culprits, but since the burden of proof in fraud cases is a very heavy one I find that the plaintiff has failed to prove sufficiently beyond reasonable doubt that DW4 had committed the offence of fraud. As is decided in *Asean Security Paper Mills Sdn Bhd v. CGU Insurance Bhd* [2007] 2 CLJ 1 at p. 19:

[12] It is now settled law that the standard of proof required where there is an allegation of fraud in a civil proceedings must be one of beyond reasonable doubt and not on a balance of probabilities.

[22] On the evidence this court finds that the plaintiff has also failed to establish the offence of conspiracy as there is insufficient evidence to prove there was an agreement amongst all the officers of the defendant and that they had secretly shared a common intention to effect a common purpose of assisting the culprits in forging the signatures of K Sila Dass and Amar Jit Kaur as in P1 and D8 so as to injure the plaintiff which has truly caused damage to the plaintiff in this case. In *Hussin Umar v. Dilip Singhji* AIR (57) [1970] SC 45 the Indian Supreme Court explains the offence of conspiracy as follows:

The agreement is the gist of the offence. In order to constitute a general conspiracy there must be common design and a common intention of all to work in furtherance of the common design.

[23] The Court of Appeal in *SV Beverages Holdings Sdn Bhd & Ors v. Kickapoo (Malaysia) Sdn Bhd* [2008] 4 CLJ 20 held at para. 18 as follows:

In the tort of conspiracy, there must be an agreement or combination of two or more with the common intention to effect an unlawful purpose or to do a lawful act by unlawful means resulting in damages to the plaintiff (*Industrial Concrete Products Bhd v. Concrete Engineering Products Bhd & Other Suits* [2001] 8 CLJ 262, *Mulcahy v. R* [1868] LR 3 HL 306 at 317 and *Belmont Finance v. Williams Furniture (No 2)* [1980] 1 All ER 393 at page 403).

At para. 22 the Court of Appeal went on and held as follows:

Similarly, regarding conspiracy, in the absence of direct evidence, the question is whether the united effect of all those facts can provide a strong enough basis to support the inference that there must have

A been an agreement between the appellants or any two of them with the common intention of unlawfully interfering with and causing damages to the respondent's business. The totality of the evidence appears to fall short of supporting the aforesaid inferences.

B Be that as it may based on the evidence before this court I'm satisfied that the defendant's officers had been negligent in discharging their duties by breaching the duty of care they owed towards the plaintiff. If not for their negligence the culprits would not and could not have opened and operated the impugned accounts causing plaintiff's money to dissipate from the said accounts resulting in substantial loss to the plaintiff.

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[24] Learned counsel for the defendant had earlier submitted that there is no banking relationship between the plaintiff and the defendant and consequently there could not be any breach of duty by the defendant. In support of their contention learned counsel for the defendant cited

D *Stoney Stanton Supplies (Coventry) Ltd v. Midland Bank Ltd* [1996] 2 Lloyd's Rep 373 (Court of Appeal) where Lord Denning had held that:

E As to the claim against the Bank for breach of duty, that too fails, for the simple reason that there was never any relationship of banker and customer. As far as the opening of the account was concerned, it was not taken out by the company but by Fox, who forged all the documents. The company did not authorize it at all. It is quite impossible to hold that there was any relationship of banker and customer between this company and the Bank. The company never authorized anything at all. It is rather like the case of Mr. A in *Robinson v. Midland Bank Ltd*, (1925) 4L T.L.R. 422. Where a person opens an account in the name of another person without any authority so to do, it is quite plain there is no relationship of banker and customer and so no question of breach of duty arises.

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[25] On this matter I agree with the submission of learned counsel for the plaintiff that it would be absurd for the defendant to contend that it owed the plaintiff no duty of care notwithstanding the glaring evidence from its own witnesses that the defendant was negligent. In this case the plaintiff was at all material time an existing customer of the defendant unlike the plaintiff in *Stoney Stanton* who was never the customer of the bank.

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[26] In this case money had dissipated from the impugned accounts as a result of the defendant's negligent act which had directly affected the plaintiff. In a situation such as in this case would it not be a harsh blow to the reasonable minds and a hard slap on the face of justice to say that the defendant has nothing to do with the plaintiff and therefore

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owed him no duty of care at all. A reasonable person in the defendant's shoes would know for sure a negligent act on its part in the course of its business as in this case would definitely affect its customer, and in this case the plaintiff. Having heard the witnesses, studied their credibility and observed their demeanour I find clear evidence from the defendant's own witnesses to show that the defendant's officers had been guilty of negligent while discharging their duties in the opening of the two impugned accounts.

[27] In *Oriental Bank of Malaya v. Rubber Industry (Replanting) Board* [1957] 1 LNS 50; [1957] MLJ 153 at 156 Buhagiar J had referred to the decision of Lord Dunedin in *Commissioners of Taxation v. English, Scottish and Australian Bank* [1920] AC 683 and had observed as follows:

In *Commissioners of Taxation v. English, Scottish and Australian Bank*, Lord Dunedin delivering the judgment of their Lordships said at p. 687:

Their Lordships are of the opinion that the word 'customer' signifies a relationship in which duration is not of the essence. A person whose money has been accepted by a bank on the footing that they undertake to honour cheques up to the amount standing to his credit is in the view of their Lordships, a customer of the bank in the sense of the statute, irrespective of whether his connection is of short or long standing.

[28] As regards the monthly statement sent by the bank to the plaintiff's firm which was then under trust and administrative care of the culprit Manoharan I agree with the contention of the learned counsel for the plaintiff that that cannot signify anything more than the acceptance of the existence of the impugned accounts and the various transactions therein. The impugned accounts were not opened by the plaintiff and being Manoharan's stratagem, it would be no surprise for anybody in his position to intercept and keep away those bank statements from the partners of the plaintiff until his disappearance. Considering the evidence, facts and circumstances of this case it is my considered view that the defence of estoppel is inapplicable here.

[29] In *United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd* [1993] 2 CLJ 31 at p. 40 the Supreme Court held:

After a careful examination of the decisions of the Superior Court of Commonwealth, we are satisfied that there does not exist, at common law, a further duty on the part of a customer to take precautions in the general course of his business to prevent forgeries on the part of

A his servants. Neither is there at common law, in the absence of a contract to the contrary a duty imposed upon the customer to inspect his periodical bank statements to ensure that his account is being properly maintained by the bank.

B [30] That the impugned account was used to pay by cheques a partner's annual contribution to the Bar Council Compensation Fund 2004 in the amount of RM100 and to the Bar Council Disciplinary Fund 2004 in the sum of RM60 are mere evidence that the monies in the impugned account were only used to make a few minor contributions towards the ordinary course of administration at the firm during the time
C when it was under Manoharan's control administratively. No attempts were made by the defendant to prove their allegations that it was the partners of the plaintiff firm who had issued the said cheques.

D [31] On a balance of probabilities it is this court's findings that the signatures of Mr Sila Dass and Amar Jit were forged and that they had not authorised the opening of the said impugned accounts. Instead it is the servants and/or agents and/or employees of the defendant who were negligent and liable to the plaintiff in the opening and the operations of the impugned accounts. These had facilitated the culprits in the withdrawal of monies and/or cheques made in favour of the plaintiff from
E the same accounts resulting in damage and losses to the plaintiff.

F [32] However, it is the finding of this court that the plaintiff has failed to prove beyond reasonable doubt that the defendant had committed fraud against them. Nonetheless, on a balance of probabilities the plaintiff has proven to this court that the defendant's officers had been negligent in discharging their duties by breaching the duty of care they owed towards the plaintiff which has resulted in the plaintiff suffering the losses. As the defendant is bound by the acts of its officers it is the finding of this court that the defendant is vicariously liable for the consequences of their act and in breach of its fiduciary duties towards
G the plaintiff.

H [33] It is also the finding of this court that the plaintiff is not time-barred by the provisions of the Limitation Act 1953 as the period of limitation begins after the discovery of the cause of action. According to s. 29:

Where, in the case of any action for which a period of limitation is prescribed by this Act, either:

I (a) The action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or

(b) The right of action is concealed by the fraud of any such person as aforesaid; or **A**

(c) The action is for relief from the consequences of a mistake,

The period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it. **B**

[34] It was only after July 2006 when Manoharan absconded, and upon enquiries made to the defendant bank that the fraud by Manoharan was discovered following which a police report was lodged by the plaintiff. This claim was filed in court in 2007 and is therefore not time-barred. **C**

Decision

[35] As the plaintiff has proven its case against the defendant this court is allowing its claim under ss. 28(d), (f) and (h) of its statement of claim and damages is to be assessed by the Learned Deputy Registrar. Court is awarding cost of RM30,000 to the plaintiff with interest at 5% per annum from the date of this judgment until realisation of the judgment. **D**

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